# APPENDIX

# APPENDIX

# APPENDIX A

OPINION OF COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 7053

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CONLEY TRIGG FIELDS, LUTHER COMPTON and KIRBY SMITH,
Appellants,

*versus*

UNITED STATES OF AMERICA
Appellee.

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA, AT ABINGDON.

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(Argued November 7, 1955. Decided December 27, 1955.)

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Before PARKER, Chief Judge, and SOPER and DOBIE, Circuit Judges.

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Stuart B. Campbell and Stuart B. Campbell, Jr., (A. G. Lively on brief) for Appellants; and Thomas J. Wilson, Assistant United States Attorney, and John Strickler, United States Attorney, (Benajmin F. Sutherland, Assistant United States Attorney, on brief) for appellee.

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DOBIE, Circuit Judge:

Conley Trigg Fields, Luther Compton and Kirby Smith were indicted and tried in the United States District Court for the Western District of Virginia for a violation of 18 U. S. C. A. §241.

The verdict of the jury found Conley Trigg Fields, Luther Compton and Kirby Smith guilty. Their punishment was fixed at six months confinement for Fields, twelve months confinement for Compton and a fine of $1,000.00; and Smith was placed on probation. All of the three defendants who were found guilty have appealed to us.

The statute under which the indictment was found reads:

"§241. *Conspiracy against right of citizens*

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than $5,000 or imprisoned not more than ten years, or both."

Three questions are before us on this appeal:

(1) Does the indictment state an offense under 18 U. S. C. A. §241 and, if so, was the evidence sufficient to support the verdict of guilty?

(2) Was reversible error committed in the admission of evidence relating to the registration of certain voters and in the use of a statement given the F. B. I. by Mrs. Paris Street?

(3) Was there reversible error in the Court's instructions to the jury?

We think the indictment clearly stated an offense under 18 U. S. C. A. §241. Clearly, the right of citizens to vote in the election of members of Congress, in accordance with applicable State laws, is a right secured by the federal Constitution. As was said by Mr. Justice (afterwards Chief Justice) Stone in *United States* v. *Classic*, 313 U. S. 299, 315:

> "Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted at Congressional elections. This Court has consistently held that this is a right secured by the Constitution."

See, also, *United States* v. *Mosley*, 238 U. S. 383; Ex parte Yarbrough, 110 U. S. 651; United States Constitution, Article 1, Sections 2, 4.

We think, too, that the acts charged in the indictment clearly came within both the letter and spirit of 18 U. S. C. A. §241. These acts served "to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States."

Said Mr. Justice Roberts, in *United States* v. *Saylor*, 322 U. S. 385, 389:

"If the voters' rights protected by §19 are those defined by the *Mosley* case, the frustration charged to have been intended by the defendants in the present cases violates them. For election officers knowingly to prepare false ballots, place them in the box, and return them, is certainly to prevent an honest count by the return board of the votes lawfully cast. The mathematical result may not be the same as would ensue throwing out or frustrating the count of votes lawfully cast. *But the action pursuant to the conspiracy here charged constitutes the rendering of a return which, to some extent, falsifies the count of votes legally cast.* We are unable to distinguish a conspiracy so to act from that which was held a violation of §19 in the *Mosley* case". (Italics ours.)

In *Crolick* v. *United States*, 196 F. (2d) 879, 880, cert. denied 344 U. S. 830, the indictment was sustained under the statute here involved and Circuit Judge Holmes stated:

" * * * that it was a part of said conspiracy to obstruct, prevent, and hinder, legally qualified citizens from voting in that election, and to cause disqualified persons to impersonate qualified citizens and to vote in their place; that it was a part of said conspiracy to cast false, forged, and fictitious votes, at said primary election, with the intent that said illegal votes should be counted and thus should dilute, diminish, and destroy, the value and effect of votes legally cast, with the further purpose of causing the election officers to make a false return and certification of the results of said election."

Defendants rely on the Bathgate case decided March 4,

1918 (*United States* v. *Bathgate*, 246 U. S. 220, 38 Sup. Ct. 269, 62 L. Ed. 676). The distinction between that case and the case under consideration is quite simple. The Bathgate case rested on a charge of conspiracy to bribe voters. In the original Enforcement Act, bribery of voters was made a substantive offense. This section was repealed and the Court saw in this repeal a legislative intention to exclude this offense from the operation of 18 U. S. C. A. §241. In the light of the Classic case, supra, there is small comfort for the defendants in the cases of *Klein* v. *United States*, 176 F. (2d) 184, cert. denied 338 U. S. 70; *United States* v. *Kantor*, 78 F. (2d) 710.

There is no merit in the contention of defendants that even if the indictment charged violations of laws, there should be excused under the doctrine of *de minimis*. This contention was effectively answered in *Prichard* v. *United States*, 181 F. (2d) 326, 331, affirmed 339 U. S. 974, where Circuit Judge Simons crisply said:

> "The deposit of forged ballots in the ballot boxes, no matter how small or great their number, dilutes the influence of honest votes in an election, and whether in greater or less degree is immaterial. The right to an honest count is a right possessed by each voting elector, and to the extent that the importance of his vote is nullified, wholly or in part, he has been injured in the free exercise of a right or privilege secured to him by the laws and Constitution of the United States."

See, also, *United States* v. *Saylor*, 322 U. S. 385.

The record discloses ample evidence to support the verdict of the jury. In the light of this verdict, this evidence must be viewed by us in the manner most favorable to the

Government and all questions of the credibility of witnesses are for the jury. *Carneal* v. *United States,* 212 F. (2d) 20, 22; *Tucker* v. *United States,* 207 F. (2d) 561; *Harding* v. *United States,* 182 F. (2d) 524, cert. denied 340 U. S. 874; *Myers* v. *United States,* 174 F. (2d) 329, cert. denied 338 U. S. 849; *Pilgreen* v. *United States,* 157 F. (2d) 427; *United States* v. *McDermott,* 131 F. (2d) 313, cert. denied 318 U. S. 765. And, since this is a conspiracy case, the agreement or understanding between the defendants to accomplish the illegal purpose must be inferred from the evidence in the record.

Out of a long and complicated record, we advert to certain high lights in the evidence which seem to support our conclusion. Though it was in effect denied by Compton, there was evidence that he was very active in working the mail vote in the 1952 election. There was evidence that there was a clear understanding between Compton and William Hendricks, a party Chairman, about this vote; that Compton paid Ralph Griffith to secure signed applications to vote from persons on a list supplied by Compton. The jury doubtless found it hard to believe that 40 out of the 48 mail ballots received by Compton would have been addressed to the voters in his care, even though he was a notary public, unless Compton actively brought this about by his own efforts.

There was considerable evidence of the illiteracy and ignorance of the voters and the manner in which their mail ballots were cast by Compton and Fields. Thus, Homer Street testified that Fields and Griffith brought the ballot to him and further: "Q. Do you say he (Fields) marked on the ballot when you had your hand on it? A. Yes, sir * * *. Q. Do you know who is was you were voting for? A. I put

confidence in him to help me." Somewhat similar testimony as to Compton was given by Bascom Musick.

Grover Sullivan and Mrs. Dewey Reedy testified that they did not vote in this election. The admitted possession of these two ballots by Compton and his inability to offer any explanation as to one of them raised a jury question as to whether Compton had illegally caused these votes to be counted. There was evidence that Kirby Smith, Acting Postmaster, delivered to Compton a number of mail ballots which were not addressed to the voters in care of Compton.

Not without significance is the fact that Smith withheld delivery of some 29 mail ballots at Compton's direction, though many of these addressees were patrons of Smith's post office and were well known to Smith. Smith testified on cross-examination:

"Q. So, since it is in care of, of course you are entirely free to make delivery either to the person in whose care it is or to the person themselves for whom the mail is intended, right?

A. I understand it that way.

Q. Why wouldn't you make some attempt to deliver any of the mail in care of, to people who were patrons of your office and came there and called for mail?

A. I don't have any excuse to offer.

Q. In no single instance did you attempt to make delivery of any of this 'in care of' mail other than to Mr. Compton, did you?

A. I don't recall it."

There was evidence that Fields, who had been working the mail vote in the Lebanon precinct, was sent into the Honaker precinct by Hendricks to help Compton; that Fields received from Compton the 29 mail ballots delivered on October 29 and other unvoted ballots which Compton had in his possession; that Fields was taken to these voters by Ralph Griffith, who had been used by Compton to get many of these voters to sign applications for mail ballots. There was evidence that Compton got Griffith to assist Fields in these operations in the Honaker precinct.

According to Fields, he was that day able to get into contact with, and also to vote, all of the persons, except one or two, for whom he had ballots, and the unused ballots, along with the ballots of those who had voted, were returned to Compton. The postal records and envelopes show that almost all of those ballots were mailed at Honaker and delivered in Lebanon the same day the 29 were delivered to Luther Compton. From the evidence as to the distances involved, inaccessibility of some of the homes, time required in balloting, and the employment of some of the voters, the jury was entitled to believe that it was an impossibility for Fields to have gotten in touch with more than 30 people on one week-day and to have gotten the ballots back through the mails to Lebanon on the same day, that some of those voters were never seen and that their ballots were illegally cast by Fields or Compton, or both.

There is no merit in the contention of defendants that Virginia Code, Sec. 24-104 is a bar to this prosecution. This statute provides that the registration of a voter is conclusive after six months unless a petition is filed against the registration of the voter. Whatever effect this statute might have on the question of counting these votes, manifestly it could have no effect on the question of whether these defendants were guilty of the federal crime with which they

were charged. There was evidence here, too, that some of these persons who were voted by defendants were never registered at all or were never registered in the precinct in which defendants caused their votes to be cast.

We waste little time over the contention of counsel for defendant that the Virginia election laws are directory. That argument is conclusively answered in the Classic and Mosley cases, supra.

The District Court permitted certain witnesses to be questioned as to whether or not they could read and write and to demonstrate whether or not they could mark their ballots for a particular candidate. Defendants urge that the Virginia statute concerning conclusiveness of registration makes such evidence inadmissible. One of the issues in this case was whether the defendants violated the Virginia election laws in rendering assistance to the voters in the marking of their ballots. Under Virginia Code, §24-237, it is a misdemeanor for any person (with exceptions not here applicable) to "advise, counsel or assist any elector, by writing, word or gesture, as to how he shall vote or mark his ballot." If evidence by a voter that he was given assistance is admissible, evidence by a voter that he is incapable of voting without assistance is admissible.

Defendants also object to the cross-examination of Mrs. Paris Street, an adverse witness, regarding the statement she gave to the Federal Bureau of Investigation during the investigation which preceded this prosecution. Before portions of the statement were read to Mrs. Street, counsel for defendants requested that the jury be instructed that the statement was to be introduced only for the purpose of affecting the credibility of the witness, if it did affect her credibility. When portions of it were read, defendants made no objection and at no time made any suggestion that it

was not admissible. At the conclusion of the examination the District Court instructed the jury:

> " * * * what the witness says here in Court is testimony and is her evidence which you should consider in your consideration of the case * * * ."

Under these circumstances, we find no reversible error.

We think the District Court's charge to the jury to the effect that a conspiracy to cast illegal votes in the election contrary to the election laws of Virginia was a crime under 18 U. S. C. A. §241, was, under the circumstances of this case, entirely proper. This seems to have been settled by the Classic, Yarbrough, Saylor and Mosley cases and the other cases previously cited. We find no fault with the portions of the charge dealing with Conspiracy.

Defendants complain of the refusal of the Court to charge the jury in accord with their request No. 15, which would have told the jury that under the law of Virginia, the name of an applicant for registration for voting does not have to be enrolled upon the registration book, if the applicant, in fact, and regardless of the decision of the registrar, performs all acts which are prerequisites for registration. Acceptance of this theory would destroy the very purpose of having a registration list. We think the District Court properly refused this request.

The final request of defendants reads: "(17) Also the Court is requested to charge: Sections 24-73, 24-105, 24-341, Code of Virginia." Code Section 24-73 requires notice to be given any person refused registration; Code Section 24-105 was concerned with the conclusive presumption if the petition is not filed against the registration; Code Sec-

tion 24-341 dealt with the actual casting of the mail ballots and their deposit in the ballot box. In the light of what has been previously said in this opinion, we find no prejudicial error in the District Court's refusal to give this Charge. And, it is at least open to serious doubt whether this Charge, in the form asked, conforms to Rule 30 of the Federal Rules of Criminal Procedure.

Finally, in this connection, we are convinced that the Charge of the District Court, when read as a whole, correctly stated the law applicable to this case and was entirely fair to the defendants.

This was one of those cases which might be likened to a rope. Single strands, considered apart, might not be convincing; but, when these strands are knit together, there is indeed a formidable rope, quite strong enough to form a substantial support to the jury's verdict of guilty as to Fields, Compton and Smith.

After the jury's verdict, counsel for defendants made a somewhat impassioned plea for mercy on the score that the defendants had done nothing which they did not think was right, that there was no criminal intent, no moral guilt on their part. Rather striking was the reply of the District Judge:

> "I can't agree with counsel. I think the verdict of the jury was amply justified. I think that the evidence is overwhelming and certainly convinces me beyond any doubt at all that the absentee voting law was grossly violated with knowledge and pursuant to a plan."

The judgment of the District Court is affirmed.

*Affirmed*

# APPENDIX B

## Virginia Statutes Involved

Sec. 24-73. NOTICE WHEN REGISTRATION REFUSED. —If a person is refused registration, he shall be at once notified of such refusal. (Code 1919, Sec. 93; 1934, p. 500.)

Sec. 24-105. PRESUMPTION IF PETITION NOT BROUGHT WITHIN SIX MONTHS OF REGISTRATION.— Unless the petition provided for in Sec. 24-102 is filed within six months after the registration of any person, it shall be conclusively presumed in all proceedings where the right of such person to registration arises, by election officers and by judicial tribunals, or in election contests of any kind and character, that such person has complied with all the requirements of the law in making written application to the registrar in his own handwriting, without aid, suggestion, or memorandum, in the presence of the registrar, stating therein his name, age, date and place of birth, residence, and occupation at the time and for the two years next preceding, and whether he has previously voted, and if so, the State, county, and precinct in which he voted last, and that he answered on oath any and all questions affecting his qualifications as an elector, submitted to him by the registrar, and that questions and answers thereto had been reduced to writing, and certified by the registrar. It shall not be permitted to be shown the contrary where no petition has been filed within the time prescribed. (1924, p. 718; Michie Code 1942, Sec. 107a.)

Sec. 24-240. SAMPLE OR INFORMATIVE BALLOTS. —Nothing contained in the preceding section shall be construed to prohibit: (a) The printing and circuation of "informative ballots", provided such "informative ballots" are not printed on white paper, and (b) the publication in newspapers of "informative ballots". (Code 1919, Sec. 167; 1932, p. 896.)

Sec. 24-319. Any duly qualified voter who will, in the regular and orderly course of his business, profession, occupation, or other personal affairs, or while on vacation or during his attendance as a student at any school or institution of learning, be absent from the city, town, or from the precinct in which he is entitled to vote, if in a county, and any such voter who may be physically unable to go in person to the polls on the day of election, may vote in any primary, second primary, special or general election, in accordance with the provisions of the following sections of this chapter, as amended. (Code 1919, Sec. 202; 1922, p. 875; 1924, p. 651; 1928, p. 1016; 1930, p. 5; 1952, ch. 488.)

Sec. 24-320. APPLICATIONS FOR BALLOTS TO BE FURNISHED BY ELECTORAL BOARD.—It shall be the duty of the electoral board of each county and city to furnish the registrar of each precinct with a sufficient number of applications for official ballots, the form of such applications to be prescribed by the State Board of Elections. (1946, p. 321; Michie Suppl. 1946, Sec. 210.)

Sec. 24-327. DUTY OF REGISTRAR AND ELECTORAL BOARD ON RECEIPT OF APPLICATION.—The registrar, upon receipt of the application for a ballot, if the applicant is duly registered in his precinct, shall enroll the name and address of the applicant on the list to be kept by him for the purpose, and shall forward the application with the required statement attached, to the secretary of the electoral board, noting thereon that the applicant is a registered voter of his precinct, or the registrar may approve the application and return it to the applicant for delivery to the secretary of the electoral board. If it then appear to the electoral board that the applicant is a registered voter of the precinct in which he offers to vote, the electoral board shall send to the applicant by registered mail, or deliver in person to him the following:

(a) An envelope containing the folded ballot, sealed and marked "ballot within. Do not open except in presence of a notary public" or other officer mentioned in Sec. 24-334.

(b) An envelope for resealing the marked ballot, on which is printed the "voucher", the form of which is hereinafter given.

(c) A properly addressed envelope for the return of the ballot to the electoral board by registered mail or by the applicant in person.

(d) A printed slip giving instruction as to the manner of making out the voucher on the envelope for the return of the ballot hereinafter mentioned and how the same shall be returned.

(e) A "coupon", the form of which is hereinafter given. (Code 1919, Sec. 208; 1922, p. 875; 1924, p. 644; 1926, p. 463; 1928, p. 1017; Michie Code 1942, Sec. 205; 1946, p. 319; 1948, p. 741.)

Sec. 24-332. FORM OF VOUCHER. — The "voucher" called for in Sec. 24-327, and printed on the envelope in which the ballot is to be sealed after the same has been marked, shall be in the following form:

VOUCHER.

This is to certify that the enclosed ballot was received by me as per my application to the registrar of..... precinct. .....county (or city), Virginia. The envelope marked "ballot within" was opened by me in the presence of ....., notary public (or other officer mentioned in Sec. 24-334), of....., marked while in his presence, without assistance or know-

ledge on the part of anyone as to manner in which same was prepared, and then and there sealed as provided by law.

Signed .....

Teste: .....

Notary public (or other person designated in Sec. 24-334).

(Code 1919, Sec. 211; 1922, p. 875; 1924, p. 645; Michie Code 1942, Sec. 206.)

Sec. 24-333. FORM OF COUPON.—The "coupon" called for in Sec. 24-327 shall be in the following form:

COUPON

Name (given by voter) ....., color....., height ....., age (given by voter) ....., color of hair ....., color of eyes....., weight (estimated) ....., birthplace (given by voter)....., occupation (given by voter) ....., State and precinct where voter claimed to have last voted.....

To the best of my knowledge, the above information is correct, and the applicant has complied with the requirements of the law as above provided. I have no knowledge whatever of the marking, erasure, or intent of the ballot enclosed.

Signed .....

Notary public (or other person mentioned in Sec. 24-334).

(1922, p. 876; 1924, p. 645; Michie Code 1942, Sec. 207; 1946, p. 320.)

Sec. 24-339. NAMES OF APPLICANTS FOR BALLOTS AND OF PERSONS RETURNING BALLOTS TO BE POSTED.—On the morning of the day of election on which the

ballots are to be offered, the registrar and the electoral board, respectively, shall post true copies of the lists required by Secs. 24-330 and 24-338 in conspicuous places at the polling place of the proper precincts. (Code 1919, Sec. 214; 1922, p. 877; Michie Code 1942, Sec. 212; 1946, p. 322.)

Sec. 24-341 OPENING BOX CONTAINING BALLOTS.—At the close of the regular balloting, the box shall be opened by the judges of election, and the ballots deposited in regular ballot boxes in the following manner. As each envelope is removed from the box, the name of the voter shall be called and checked as if the voter were voting in person. If found entitled to cast his vote, the envelope shall then, but not until then, be opened, and the ballot deposited in the regular box without examining or unfolding it, and the name of the voter shall be entered by the clerks on the poll books. (Code 1919, Sec. 216; 1922, p. 877; Michie Code 1942, Sec. 214.)

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# In the Supreme Court of the United States

OCTOBER TERM, 1955

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No. 630

CONLEY TRIGG FIELDS, LUTHER COMPTON, and KIRBY SMITH, PETITIONERS

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT*

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINION BELOW

The opinion of the Court of Appeals (Pet. App. 1-11; R. II,[1] 16-27) is not yet reported.

### JURISDICTION

The judgment of the Court of Appeals was entered on December 27, 1955 (R. II, 28). The peti-

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[1] The record is in two volumes. "R." refers to Volume I, which was the appellants' printed appendix in the Court of Appeals. "R. II" refers to the papers contained in Volume II of the record as filed in this Court.

tion for a writ of certiorari was filed on January 23, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

### QUESTIONS PRESENTED

1. Whether there was sufficient evidence to sustain the convictions of petitioners under 18 U. S. C. 241.

2. Whether the court erred in admitting testimony by mail voters, who were illegally assisted by petitioners Compton and Fields in casting their ballots, to the effect that they could not read or write.

3. Whether the court erred in its charge to the jury in refusing to give an instruction concerning the conclusiveness of a registration list, and in refusing to read certain Virginia election statutes.

### STATUTES INVOLVED

The statute under which petitioners were convicted, 18 U. S. C. 241, 62 Stat. 696, and pertinent Virginia statutes regarding elections, are set out in the Appendix, *infra,* pp. 12-17.

### STATEMENT

Petitioners were charged in an indictment returned in the United States District Court for the Western District of Virginia with conspiring to injure and oppress United States citizens in their right to vote for the purpose of electing, among other officials, a United States Senator and a member of the House of Representatives of the Congress of the United States, at the November 1952 election, in violation of 18 U. S. C. 241 (*infra,* p.

12). It was charged that petitioners caused legally qualified voters to vote in an illegal manner in violation of Virginia election laws; caused legally unqualified voters to impersonate qualified voters; and caused the casting of forged, fraudulent, and fictitious votes by absentee mail, with the intention that said illegal votes would dilute the value of the votes legally cast and cause a false return by the election officials. (R. 2-4.) Upon conviction (R. 410), Fields was sentenced to imprisonment for six months; Compton to imprisonment for 12 months and a $1,000 fine; and Smith was placed on probation for two years (R. 20-23). On appeal the convictions were unanimously affirmed (R. II, 11-12, 28).

The evidence may be summarized as follows:

Fields was a former deputy sheriff living at Lebanon, Virginia, the county seat of Russell County (R. 235). Luther Compton, a resident of Honaker in Russell County, was a lumberman and a leading Democratic politician (R. 262, 274, 291). Smith was Compton's first cousin, had worked in his office since 1949, and at the time of the November 1952 election was the postmaster at Honaker (R. 272-273, 274, 293, 294).

The Virginia statutes (see *infra*, pp. 13-17) provide for absentee mail votes for qualified voters unable to be present at the polls on election day. At the 1952 election for President and members of Congress, 111 mail ballots were cast in the Honaker precinct (R. 148, 184, 194).

Hendricks, the campaign manager for Long, the

Democratic congressional candidate, had an understanding that Luther Compton would "work the mail ballot in the Honaker precinct" (R. 352-353, 355). Hendricks was interested in getting a large mail ballot, not only for Long, but for the entire Democratic ticket (R. II, 9).

Luther Compton hired Glen Compton and Ralph Griffith to obtain mail vote applications for voters in the Honaker area (R. 31-32). Glen Compton testified that Luther Compton paid him 75 cents per application or a total of about $10 (R. 32). Griffith, called as a defense witness, denied that he (Griffith) had been paid a similar amount (R. 328). A number of government witnesses who cast mail ballots stated that they had received their applications from Glen Compton and Griffith (R. 40, 60, 89, 112, 116). Some of them testified that they had authorized the mailing of their absentee ballots in care of Luther Compton (R. 116, 121, 125), while others stated that they had not authorized this (R. 38, 89, 97, 113).

The postal records (Gov. Exs. 11-15(A); R. 144) showed that between October 8 and November 2, 1952, there were received in the Honaker Post Office from the electoral board in Lebanon 65 mail ballots, of which 48 were delivered to Luther Compton. Twenty-nine mail ballots sent by registered mail and for the most part addressed to voters in care of Compton [2] were received in the Honaker Post Office on October 22, and on October 29, 1952,

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[2] A few of the 29 were apparently not addressed in care of Compton (R. 299-300).

were delivered to Luther Compton's secretary (R. 295-296, 300-301, 303-304). According to Compton and Smith, when Smith delivered these ballots to Compton on October 22, Compton told him to take them back (R. 263-264, 276, 296). Compton stated that he consulted attorneys as to the legality of receiving the ballots before he ordered his secretary to accept delivery on October 29 (R. 264-266). During the seven days that Smith held these ballots in accordance with Compton's instructions, he made no effort to deliver them to the voter addressees, although most of them were his regular mail patrons. As to his reason for not doing so, he stated, "I don't have any excuse to offer" (R. 304-306).[3]

Compton turned over to Fields the 29 ballots on October 29, and Fields and Griffith then obtained the mail votes for most of these voters (R. 267, 237-245, 247). Most of these ballots were mailed in Honaker on October 29 and received in Lebanon by the electoral board on the same day (Gov. Ex. 16; R. 191, 193).

Ten absentee mail voters testifying as government witnesses stated that petitioner Fields and Griffith brought their ballots to them for the execution of their votes (R. 40, 56, 60, 67, 89, 99, 101, 113, 117, 130). Seven others testified that their votes had been taken by petitioner Compton (R. 46-47, 50-51, 53, 93, 108, 121, 125, 128).

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[3] Smith testified that he knew the registered mail from the electoral board contained mail ballots (R. 298) and knew that Compton had been working the mail vote (R. 301-302).

One witness testified that Fields and he held the pencil when marking his vote, and in answering the question as to whether he knew for whom he was voting, he stated "I put confidence in [Fields] to help me" (R. 42, 53). Another testified that, although he marked his own ballot, Luther Compton "showed me and helped me some on it" (R. 47). Other witnesses, voted by either Fields or Compton, testified or demonstrated to the jury that they could not read or mark a ballot without help, and most of them admitted that they were assisted by Fields or Compton in marking their ballots (R. 34-36, 50, 54, 56-57, 61-63, 90, 101-102, 109, 113, 125-126, 132).

Mrs. Dewey H. Reedy and Grover Sullivan testified that they were not living in Virginia in November 1952, that they did not apply for mail ballots, that they did not authorize mail ballots to be sent to Luther Compton, and that they did not vote in the 1952 election (R. 37-38, 96-97). The postal records showed that ballots in these names were delivered to Luther Compton and were voted (R. 190, 376-377). Compton stated that he did not vote Mrs. Reedy's ballot, and could not explain who might have voted it (R. 270, 290). Defense testimony by Compton, Griffith, and one Runyon, was to the effect that Sullivan had voted and that Runyon had notarized his ballot (R. 269, 325, 348-349).

A check by the F. B. I. of the registration books for Honaker precinct showed that at least 10 persons who applied for mail ballots in the 1952 election had not been registered there (R. 167-169, R. 176-177; see further R. 175-183).

Two witnesses testified that Griffith told them that Compton and Fields had bought Griffith's vote and that of his wife for $5.00 each in the 1952 presidential election. At the time this testimony was introduced, the court instructed the jury that it was not to be considered as substantive evidence, but only as going to the credibility of Griffith as a witness. (R. 380-382.)

ARGUMENT

1. Petitioners argue that the evidence failed to show election irregularities of sufficient gravity to make out a federal offense under 18 U. S. C. 241 (Pet. 12-25, 27-28).

It is well settled that the right of a citizen to cast his vote in a congressional election is a right secured by Article I, Sections 2 and 4 of the Constitution of the United States. A conspiracy to cast forged, fictitious, or illegal votes at such an election is a conspiracy to injure and oppress the citizen in the free exercise of a right secured by the Constitution within the meaning of 18 U. S. C. 241. *United States* v. *Saylor*, 322 U. S. 385; *United States* v. *Classic*, 313 U. S. 299; *United States* v. *Moseley*, 238 U. S. 383; *Ex parte Yarbrough*, 110 U. S. 651.

Clearly such a conspiracy was proved. At the time of sentencing the trial court remarked, "I think the verdict of the jury was amply justified. I think that the evidence is overwhelming and certainly convinces me beyond any doubt at all that the absentee voting law was grossly violated with knowledge and pursuant to a plan" (R. II, 10). The court below comprehensively reviewed the evidence and found it sufficient (Pet. App. 6-8). Both

courts having found the evidence sufficient to support the convictions, there is no occasion for further review of the evidence by this Court. See *United States* v. *Johnson,* 319 U. S. 503, 518; *Delaney* v. *United States,* 263 U. S. 586, 589-590.

Nevertheless, we allude briefly to the evidence. Fictitious or forged votes were cast in the names of Grover Sullivan and Mrs. Dewey Reedy, who testified that they did not apply for mail ballots, that they did not authorize that ballots for them be sent to Compton, and that they did not vote in the 1952 election (R. 37-38, 96-97). Petitioners acknowledge this proof, suggesting that it should be ignored as an inconsequential irregularity (Pet. 19). But, as the court said in *Prichard* v. *United States,* 181 F. 2d 326, 331 (C. A. 6), affirmed, 339 U. S. 974, "The deposit of forged ballots in the ballot boxes, no matter how small or great their number, dilutes the influence of honest votes in an election, and whether in greater or less degree is immaterial". Moreover fictitious ballots were also cast in the names of at least 10 persons not registered in the Honaker precinct (R. 167-169, 176-177; see further R. 175-183), and finally petitioners admit (Pet. 19, 20) that illegal votes were cast by reason of assistance to voters by Fields and Compton, contrary to Virginia Code, § 24-237 (*infra,* p. 13). All of these irregularities combined to dilute, diminish, and destroy the value and effect of the votes legally cast in violation of 18 U. S. C. 241. *United States* v. *Saylor, supra; United States* v. *Classic, supra.*

Petitioners' reliance (Pet. 19, 22) upon *United*

*States* v. *Bathgate*, 246 U. S. 220, is misplaced. That case involved a factual situation, *i. e.*, conspiracy to bribe voters at a general congressional election, different from that in the instant case. *Bathgate* has lost much of its force, moreover, from this Court's determination not to follow its rationale in its later decisions in *United States* v. *Classic*, 313 U. S. 299, 324, and *United States* v. *Saylor*, 322 U. S. 385, 388-390. Since *Classic* and *Saylor* were decided after *United States* v. *Kantor*, 78 F. 2d 710 (C. A. 2), upon which petitioners also rely (Pet. 16, 22), that case does not help them.

2. Petitioners assert (Pet. 26-27) that the court erred in admitting testimony by mail voters to the effect that they were not able to read or write in the process of casting their ballots (R. 51, 54, 56, 61, 98, 101-102). The argument is that such evidence is rendered inadmissible by reason of § 24-105 of the Virginia Code (*infra*, pp. 12-13), which provides for a conclusive presumption that all persons listed on the registration book made written application for registration in their own handwriting, without aid, as required by law, and are qualified to vote, unless a petition is filed within six months after registration to remove their names from the list.

This evidence tended to show that Compton and Fields illegally assisted voters in casting their ballots, in violation of § 24-237 of the Virginia Code (*infra*, p. 13) proscribing such assistance. This conceded illegal assistance (see Pet. 19, 20) was a part of petitioners' conspiracy to violate 18 U. S. C. 241 by the casting of illegal votes. The effect

§ 24-105 would have on the right to vote of persons whose registration had not been attacked is beside the point. As the court below correctly observed, this statute "manifestly * * * could have no effect on the question of whether [petitioners] were guilty of the federal crime with which they were charged" (Pet. App. 8-9).

3. Finally, there is no merit to petitioners' contention (Pet. 28-29) that the court erred in refusing to give their requested instruction No. 15 and to read to the jury certain Virginia statutes. Petitioners' requested instruction No. 15 is as follows (R. 17-18):

> It is not necessary in order for a person to vote legally that the name of such person be actually enrolled on the registration book, provided such person has done all that he or she is required to do in order to become registered and has been accepted by the registrar as eligible for registration but whose name through neglect, over-sight, or omission of the registrar, has been omitted from actual enrollment.

This request does not follow § 24-105 (*infra*, pp. 12-13), as stated by petitioners (Pet. 28). Moreover it was one of three requested instructions relating to one Deel who was named as a co-defendant, but acquitted (R. 17-18, 410).[4] The requested instruc-

[4] Mr. and Mrs. Harvey Clarke, whose names were not on the registration list (R. 167, 168) testified that defendant Deel, the registrar, had registered them (R. 314-317), and Deel also testified to this effect (R. 201-202).

tion was not relevant to the charges against petitioners in the light of the evidence adduced; and the instruction was on an abstract proposition of law incorrectly stated, which could not aid, but only mislead, the jury. Cf. *Benatar* v. *United States*, 209 F. 2d 734, 743-744 (C. A. 9), certiorari denied, 347 U. S. 974.

The court's refusal (R. 18, 407) to read to the jury § 24-73, § 24-105 and § 24-341 of the Virginia code (*infra*, pp. 12-13, 17), similarly did not constitute error. The charge as a whole (R. 398-407) accurately covered the federal offense with which petitioners were charged. The reading of Virginia statutes not directly relevant without correlation to specific evidence would only have tended to confuse the jury. Cf. *Finn* v. *United States*, 219 F. 2d 894, 903 (C. A. 9), certiorari denied, 349 U. S. 906.

## CONCLUSION

The decision of the court below is in accordance with established legal principles, and there is no conflict of decisions. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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FEBRUARY, 1956.

APPENDIX

18 U. S. C. [1952 Ed.] 241, 62 Stat. 696, provides:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same;
>
> * * * * *
>
> They shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

Pertinent provisions of the Code of Virginia, 1950, are as follows:

> § 24-73. *Notice when registration refused.*— If a person is refused registration, he shall be at once notified of such refusal.
>
> * * * * *
>
> §24-105. *Presumption if petition not brought within six months of registration.*—Unless the petition provided for in § 24-102 is filed within six months after the regstration of any person, it shall be conclusively presumed in all proceedings where the right of such person to registration arises, by election officers and by judicial tribunals, or in election contests of any kind and character, that such person has complied with all the requirements of the law in making written application to the registrar in his own handwriting, without aid, suggestion, or memorandum, in the pres-

ence of the registrar, stating therein his name, age, date and place of birth, residence, and occupation at the time and for the two years next preceding, and whether he has previously voted, and if so, the State, county, and precinct in which he voted last, and that he answered on oath any and all questions affecting his qualifications as an elector, submitted to him by the registrar, and that questions and answers thereto had been reduced to writing, and certified by the registrar. It shall not be permitted to be shown the contrary where no petition has been filed within the time prescribed.

* * * * *

§ 24-237. *Advice or assistance in marking ballot.*—Except as provided by § 24-251 [assistance of physically disabled by election judges], no person shall advise, counsel, or assist any elector, by writing, word, or gesture, as to how he shall vote or mark his ballot after the same has been delivered to him by the judges of election. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five hundred nor more than one thousand dollars and confined in jail six months.

* * * * *

§ 24-319. *When absent voter may vote.*—Any duly qualified voter who will, in the regu-

lar and orderly course of his business, profession, occupation, or other personal affairs, or while on vacation or during his attendance as a student at any school or institution of learning, be absent from the city, town, or from the precinct in which he is entitled to vote, if in a county, and any such voter who may be physically unable to go in person to the polls on the day of election, may vote in any primary, second primary, special or general election, in accordance with the provisions of the following sections of this chapter, as amended.

§ 24-320. *Applications for ballots to be furnished by electoral board.*—It shall be the duty of the electoral board of each county and city to furnish the registrar of each precinct with a sufficient number of applications for official ballots, the form of such applications to be prescribed by the State Board of Elections.

* * * * *

§ 24-327. *Duty of registrar and electoral board on receipt of application.*—The registrar, upon receipt of the application for a ballot, if the applicant is duly registered in his precinct, shall enroll the name and address of the applicant on the list to be kept by him for the purpose, and shall forward the application with the required statement attached, to the secretary of the electoral board, noting thereon that the applicant is a registered voter of his precinct, or the registrar may approve the ap-

plication and return it to the applicant for delivery to the secretary of the electoral board. If it then appear to the electoral board that the applicant is a registered voter of the precinct in which he offers to vote, the electoral board shall send to the applicant by registered mail, or deliver in person to him the following:

(a) An envelope containing the folded ballot, sealed and marked "ballot within. Do not open except in presence of a notary public" or other officer mentioned in § 24-334.

(b) An envelope for resealing the marked ballot, on which is printed the "voucher", the form of which is hereinafter given.

(c) A properly addressed envelope for the return of the ballot to the electoral board by registered mail or by the applicant in person.

(d) A printed slip giving instruction as to the manner of making out the voucher on the envelope for the return of the ballot hereinafter mentioned and how the same shall be returned.

(e) A "coupon", the form of which is hereinafter given.

* * * * *

§ 24-332. *Form of voucher.*—The "voucher" called for in § 24-327, and printed on the envelope in which the ballot is to be sealed after the same has been marked, shall be in the following form:

Voucher

This is to certify that the enclosed ballot was received by me as per my application to the registrar of ——— precinct, ——— county (or city), Virginia. The envelope marked "ballot within" was opened by me in the presence of ———, notary public (or other officer mentioned in § 24-334), of ———, marked while in his presence, without assistance or knowledge on the part of anyone as to manner in which same was prepared, and then and there sealed as provided by law.

(Signed) —— ——.

Teste: —— ——,

Notary public (or other person designated in § 24-334).

§ 24-333. *Form of coupon.*—The "coupon" called for in § 24-327 shall be in the following form:

Coupon

Name (given by voter) —— ——, color ——, height —, age (given by voter) ——, color of hair ——, color of eyes ——, weight (estimated) ——, birthplace (given by voter) ——, occupation (given by voter) ——, State and precinct where voter claimed to have last voted ———.

To the best of my knowledge, the above information is correct, and the applicant has complied with the requirements of the law as

above provided. I have no knowledge whatever of the marking, erasure, or intent of the ballot enclosed.

(Signed) ——— ———,
Notary public (or other person mentioned in § 24-334).

§ 24-334. *How ballots marked and returned.* —Upon receipt of the registered letter, forwarded by the electoral board, the voter shall not open the sealed envelope, marked "ballot within", except in the presence of a notary public or other officer authorized by law to take acknowledgments to deeds, and shall then and there mark and refold the ballot without assistance and without making known the manner of marking same. He shall then and there place the ballot in the envelope provided for the purpose, seal the envelope, and fill in and sign the voucher printed on the back of the envelope in the presence of a notary public or other officer hereinabove provided, who shall witness the same in writing. This envelope, together with the coupon, which must be filled out and signed by the notary public, or other officer as herein provided, shall be enclosed within the envelope directed to the electoral board which shall then and there be sealed, and shall be registered and mailed to the electoral board, or delivered personally by the voter to the electoral board.

* * * * *

§ 24-341. *Opening box containing ballots.*—At the close of the regular balloting, the box shall be opened by the judges of election, and the ballots deposited in regular ballot boxes in the following manner. As each envelope is removed from the box, the name of the voter shall be called and checked as if the voter were voting in person. If found entitled to cast his vote, the envelope shall then, but not until then, be opened, and the ballot deposited in the regular box without examining or unfolding it, and the name of the voter shall be entered by the clerks on the poll books.

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